



1 “(z) ‘Non-employee’ means an individual who—

2 “(1) a person has engaged, in the course of the  
3 trade or business of the person, for the performance  
4 of labor or services; and

5 “(2) is not an employee of the person.

6 “(aa) ‘Covered individual’ when used with respect to  
7 an employer or other person means—

8 “(1) an employee of the employer; or

9 “(2) a non-employee of the person (including a  
10 person who is an employer)—

11 “(A) whom the person has engaged, in the  
12 course of the trade or business of the person,  
13 for the performance of labor or services; and

14 “(B)(i) with respect to whom the person is  
15 required to file an information return under  
16 section 6041A(a) of the Internal Revenue Code  
17 of 1986; or

18 “(ii) who is providing labor or services to  
19 the person through an entity that is a trust, es-  
20 tate, partnership, association, company, or cor-  
21 poration (as such terms are used in section  
22 7701(a)(1) of the Internal Revenue Code of  
23 1986) if—

24 “(I) such individual has an ownership  
25 interest in the entity;

1                   “(II) creation or maintenance of such  
2                   entity is a condition for the provision of  
3                   such labor or services to the person; and

4                   “(III) the person would be required to  
5                   file an information return for the entity  
6                   under section 6041A(a) of the Internal  
7                   Revenue Code of 1986 if the entity was an  
8                   individual.”.

9           (b) CLASSIFICATION AS EMPLOYEES.—Section 11(c)  
10 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
11 211(c)) is amended—

12           (1) by striking “(c) Every employer subject to  
13           any provision of this Act or of any order issued  
14           under this Act” and inserting the following:

15           “(c) RECORDKEEPING; CLASSIFICATION; NOTICE.—

16           “(1) RECORDKEEPING.—Every person subject  
17           to any provision of this Act or of any order issued  
18           under this Act”; and

19           (2) by adding at the end the following:

20           “(2) CLASSIFICATION.—

21           “(A) IN GENERAL.—Every person (includ-  
22           ing every employer and enterprise), who em-  
23           ploys any employee engaged in commerce or in  
24           the production of goods for commerce or en-  
25           gages any non-employee engaged in commerce

1 or in the production of goods for commerce,  
2 shall—

3 “(i) accurately classify each covered  
4 individual as an employee or a non-em-  
5 ployee (as the case may be);

6 “(ii) provide, to each covered indi-  
7 vidual, a written notice that—

8 “(I) informs the covered indi-  
9 vidual of the classification of such in-  
10 dividual, by the person submitting the  
11 notice, as an employee or a non-em-  
12 ployee;

13 “(II) includes a statement direct-  
14 ing such individual to the Department  
15 of Labor website established under  
16 section 3 of the Payroll Fraud Pre-  
17 vention Act of 2015, or other appro-  
18 priate resources, for the purpose of  
19 providing further information about  
20 the legal rights of an employee;

21 “(III) includes the address and  
22 telephone number for the applicable  
23 local office of the Department of  
24 Labor; and

1                   “(IV) includes for each covered  
2 individual classified as a non-employee  
3 by the person providing the notice, the  
4 following statement: ‘Your rights to  
5 wage, hour, and other labor protec-  
6 tions depend upon your proper classi-  
7 fication as an employee or a non-em-  
8 ployee. If you have any questions or  
9 concerns about how you have been  
10 classified or suspect that you may  
11 have been misclassified, contact the  
12 U.S. Department of Labor.’; and

13                   “(iii) maintain a copy of such notice  
14 as a required record under paragraph (1).

15                   “(B) TIMING OF NOTICE.—

16                   “(i) IN GENERAL.—The notice de-  
17 scribed in subparagraph (A)(ii) shall be  
18 provided, at a minimum, to each covered  
19 individual not later than 6 months after  
20 the date of enactment of the Payroll Fraud  
21 Prevention Act of 2015, and thereafter—

22                   “(I) for each new employee, upon  
23 employment; and

1                   “(II) for each new non-employee,  
2                   upon commencement of the labor or  
3                   services provided by the non-employee.

4                   “(ii) CHANGE IN STATUS.—Each per-  
5                   son required to provide a notice under sub-  
6                   paragraph (A)(ii) to a covered individual  
7                   shall also provide such notice to such indi-  
8                   vidual upon changing the status of such in-  
9                   dividual as an employee or a non-employee.

10                  “(C) PRESUMPTION.—

11                   “(i) IN GENERAL.—For purposes of  
12                   this Act and the regulations or orders  
13                   issued under this Act, a covered individual  
14                   to whom a person is required to provide a  
15                   notice under subparagraph (A)(ii) shall be  
16                   presumed to be an employee of the person  
17                   if the person has not provided the indi-  
18                   vidual with such notice within the time re-  
19                   quired under subparagraph (B).

20                   “(ii) REBUTTAL.—The presumption  
21                   under clause (i) shall be rebutted only  
22                   through the presentation of clear and con-  
23                   vincing evidence that a covered individual  
24                   described in such subparagraph is not an  
25                   employee of the person.”.

1           (c) SPECIAL PROHIBITED ACTS.—Section 15(a) of  
2 the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a))  
3 is amended—

4           (1) by striking paragraph (3) and inserting the  
5 following:

6           “(3) to discharge or in any other manner dis-  
7 criminate against any covered individual (including  
8 an employee) because such individual has—

9           “(A) opposed any practice, filed any peti-  
10 tion or complaint, or instituted or caused to be  
11 instituted any proceeding—

12           “(i) under or related to this Act (in-  
13 cluding concerning the status of a covered  
14 individual as an employee or a non-em-  
15 ployee for purposes of this Act); or

16           “(ii) concerning the status of a cov-  
17 ered individual as an employee or a non-  
18 employee for employment tax purposes  
19 within the meaning of subtitle C of the In-  
20 ternal Revenue Code of 1986;

21           “(B) testified or is about to testify in any  
22 proceeding described in subparagraph (A); or

23           “(C) served, or is about to serve, on an in-  
24 dustry committee;”;

1           (2) in paragraph (5), by striking the period at  
2           the end and inserting “; and”; and

3           (3) by adding at the end the following:

4           “(6) to wrongly classify an employee of the per-  
5           son as a non-employee in accordance with section  
6           11(c)(2).”.

7           (d)     SPECIAL     PENALTY     FOR     CERTAIN  
8     MISCLASSIFICATION, RECORDKEEPING, AND NOTICE VIO-  
9     LATIONS.—Section 16 of the Fair Labor Standards Act  
10  of 1938 (29 U.S.C. 216) is amended—

11           (1) in subsection (b)—

12                   (A) in the sixth sentence, by striking “any  
13                   employee” each place the term occurs and in-  
14                   serting “any covered individual”;

15                   (B) in the fourth sentence—

16                           (i) by striking “employees” and in-  
17                           serting “covered individual”; and

18                           (ii) by striking “he gives his consent”  
19                           and inserting “such covered individual con-  
20                           sents”;

21                   (C) in the third sentence—

22                           (i) by striking “either of the preceding  
23                           sentences” and inserting “any of the pre-  
24                           ceding sentences”;



1 (ii) by striking “one or more employ-  
2 ees” and inserting “one or more covered  
3 individuals”; and

4 (iii) by striking “in behalf of himself  
5 or themselves and other employees” and  
6 inserting “on behalf of such covered indi-  
7 vidual or individuals and other covered in-  
8 dividuals”; and

9 (D) by inserting after the first sentence  
10 the following: “Such liquidated damages are  
11 doubled (subject to section 11 of the Portal-to-  
12 Portal Act of 1947 (29 U.S.C. 260)) where, in  
13 addition to violating the provisions of section 6  
14 or 7, the employer has violated the provisions of  
15 section 15(a)(6) with respect to such employee  
16 or employees.”; and

17 (2) in subsection (e), by striking paragraph (2)  
18 and inserting the following:

19 “(2) Any person who violates section 6, 7, 11(c), or  
20 15(a)(6) shall be subject to a civil penalty, for each em-  
21 ployee or other individual who was the subject of such a  
22 violation, in an amount—

23 “(A) not to exceed \$1,100; or

1           “(B) in the case of a person who has repeatedly  
2           or willfully committed such violation, not to exceed  
3           \$5,000.”.

4   **SEC. 3. EMPLOYEE RIGHTS WEBSITE.**

5           Not later than 180 days after the date of enactment  
6           of this Act, the Secretary of Labor shall establish a single  
7           webpage on the Department of Labor website that sum-  
8           marizes in plain language the rights of employees and non-  
9           employees under the Fair Labor Standards Act of 1938  
10          (29 U.S.C. 201 et seq.), including the rights described in  
11          the amendments made by section 2.

12   **SEC. 4. MISCLASSIFICATION OF EMPLOYEES FOR UNEM-**  
13                           **PLOYMENT COMPENSATION PURPOSES.**

14          (a) IN GENERAL.—Section 303(a) of the Social Secu-  
15          rity Act (42 U.S.C. 503(a)) is amended—

16               (1) in paragraph (11)(B), by striking the period  
17               and inserting “; and”;

18               (2) in paragraph (12), by striking the period  
19               and inserting “; and”; and

20               (3) by adding after paragraph (12) the fol-  
21               lowing:

22               “(13)(A) Such auditing and investigative proce-  
23               dures as may be necessary to identify employers that  
24               have not registered under the State law or that are  
25               paying unreported wages, where these actions or

1 omissions by the employers have the effect of exclud-  
2 ing employees from unemployment compensation  
3 coverage; and

4 “(B) the making of quarterly reports to the  
5 Secretary of Labor (in such form as the Secretary  
6 of Labor may require) describing the results of the  
7 procedures under subparagraph (A); and

8 “(14) the establishment of administrative pen-  
9 alties for misclassifying employees, or paying unre-  
10 ported wages to employees without proper record-  
11 keeping, for unemployment compensation pur-  
12 poses.”.

13 (b) REVIEW OF AUDITING PROGRAMS.—The Sec-  
14 retary of Labor shall include, in the Department of La-  
15 bor’s system for measuring the performance of States in  
16 conducting unemployment compensation tax audits, a spe-  
17 cific measure of the effectiveness of States in identifying  
18 the underreporting of wages and the underpayment of un-  
19 employment compensation contributions (including the ef-  
20 fectiveness of States in identifying instances of such  
21 underreporting or underpayments despite the absence of  
22 cancelled checks, original time sheets, or other similar doc-  
23 umentation).

24 (c) EFFECTIVE DATE.—



1 tion regarding the misclassification by a person subject to  
2 the provisions of the Fair Labor Standards Act of 1938  
3 (29 U.S.C. 201 et seq.), or any order issued under such  
4 Act of any individual regarding whether such individual  
5 is an employee or a non-employee engaged in the perform-  
6 ance of labor or services for purposes of section 6 or 7  
7 of such Act (29 U.S.C. 206, 207), or in records required  
8 under section 11(c) of such Act (29 U.S.C. 211(c)), shall  
9 report such information to the Wage and Hour Division  
10 of the Department of Labor. The Wage and Hour Division  
11 may report such information to the Internal Revenue  
12 Service as the Wage and Hour Division considers appro-  
13 priate.

14 (b) REGULATIONS.—The Secretary of Labor shall  
15 promulgate regulations to carry out this Act and the  
16 amendments made by this Act.

17 **SEC. 6. TARGETED AUDITS.**

18 The audits of employers subject to the Fair Labor  
19 Standards Act of 1938 (29 U.S.C. 201 et seq.) that are  
20 conducted by the Wage and Hour Division of the Depart-  
21 ment of Labor shall include certain industries with fre-  
22 quent incidence of misclassifying employees as non-em-  
23 ployees, as determined by the Secretary of Labor.